

Brief in Favor of the Respondent in Carpenter v. United States Josiah Chacko- Manisha Battu

Respondent Brief – Battu & Chacko

To be in the Supreme Court of the United States

April Term, 2018

TIMOTHY IVORY CARPENTER, PETITIONER

RESPONDENT’S OPENING BRIEF

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Oral argument: [link to YouTube video](#)

QUESTION PRESENTED

DOES THE WARRANTLESS SEARCH AND SEIZURE OF CELL PHONE RECORDS INCLUDING LOCATION DATA OVER THE COURSE OF 127 DAYS VIOLATE THE FOURTH AMENDMENT?

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### Lesson Plan – Carpenter v. United States

Timothy Ivory Carpenter v. United States of America Certiorari granted by the United States Supreme Court on June 5, 2017 Oral arguments TBD Outline: The Questions Presented Case Background The Law Supreme Court Cases Primary Historical Sources Secondary Sources The Question Presented Does the warrantless search and seizure of

- [http://www.abajournal.com/magazine/article/the\\_data\\_question\\_should\\_the\\_third-party\\_records\\_doctrine\\_be\\_revisited/](http://www.abajournal.com/magazine/article/the_data_question_should_the_third-party_records_doctrine_be_revisited/)
- <https://www.lawfareblog.com/supreme-court-grants-cert-carpenter-v-united-states-overview>
- <https://www.law.cornell.edu/uscode/text/18/2701>
- <https://fas.org/sgp/crs/misc/R43586.pdf>

## Statement of Argument

The fourth amendment is one that has been very influential in American Policy since the inception of the United States. When the founding fathers first established the bill of rights,

they sought to protect their citizens against unreasonable searches and seizures. According to the bill of rights, searches cannot be conducted without a warrant, reasonable doubt and/or evidence implicating the citizen in a criminal investigation. This right, has been presented before the Courts in many cases, such as whether a police squadron could actively invade a person's privacy and track their movements as in *United States v. Jones* or whether law enforcement could use telephone records to investigate theft as in *Smith v. Maryland*. This issue is very relevant to the modern era, as much of the people's information is given or obtained by third party groups such as internet providers and cell towers. In this particular case, the FBI did not violate the fourth amendment despite not obtaining an official warrant. Before Mr. Carpenter was apprehended, the FBI investigated and questioned the suspects for information regarding the armed robberies. When one of the suspects implicated more co-conspirators and gave his phone, the FBI used the suspect's phone to identify other possible colluders. Following that, the FBI approached magistrate judges for permission to obtain "transactional records" such as subscriber information, toll records, call detail records and cell site information, all information given to a third party. The magistrates allowed them to do so under the Stored and Communications Act, under which the government is allowed to make inquiries into the contents of a wired or electronic communication if the material is relevant to an ongoing investigation. The petitioners

called for the evidence from their phones to be suppressed, calling the inquiry into their information a violation of the fourth amendment. However, the FBI did not violate the fourth amendment because the information they obtained was willingly given to a third party and was necessary to an ongoing criminal investigation.

### Argument

In the "Bill of Rights as Proposed", James Madison writes, "Article the sixth. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." Clearly, the Founders intended there to be some type of restrictions on the 4th amendment as the authorities need some type of power to regulate and maintain order. George Mason makes the same case in the *Virginia Declaration of Rights (unanimously adopted June 12, 1776)*, in which he argues "[G]eneral warrants, whereby any officer or messenger may be commanded to search suspected places without evidence of a fact committed, or to seize any person or persons not named, or whose offence is not particularly described and supported by evidence, are grievous and oppressive, and ought not to be granted." In fact, most states agreed on the idea of a

protection against unreasonable search and seizure. However, what defines “unreasonable search and seizure” has changed as the ability for the surveillance and interception of information has expanded. Originally, the focus was on property, but has since drifted towards protecting privacy. Although it is vital to ensure everyone’s 4th amendment rights, it is also equally important to allow authorities to conduct their duties when necessary and reasonable.

In 1967, the Court decided *Katz v. United States*, which developed the concept of a reasonable expectation of privacy and expanded the 4th Amendment to protect intangible interests such as privacy. The case concerned an FBI investigation into the illegal gambling practices of Mr. Katz. The FBI used an electronic device to eavesdrop into a conversation Mr. Katz had in a telephone booth. This conversation was then used as evidence against Katz thus raising the constitutional question of whether or not the conversation was protected under the 4th amendment as there is a reasonable expectation of privacy in a telephone booth. The court decided that Katz’s rights were violated and Justice Harlan, in his concurring opinion, developed the Katz’s controlling test. The test was designed to deem whether a situation exhibits a reasonable expectation of privacy. The two main parts are the general assertion (that the Fourth Amendment protects people, not places) and the secrecy model. The secrecy model states, “[w]hat a person knowingly exposes to the public, even in his own home or office, is not a subject of Fourth Amendment protection.” This has major implications for the boundaries of the 4th amendment and the role of third parties.

The precedent for the 3rd party doctrine was set by the Supreme Court’s decision in the court case *United States v. Miller* in 1976. In *United States v. Miller*, the government charged Mitch Miller with carrying alcohol distillation equipment and whiskey on which liquor tax had not been paid. The Bureau of Alcohol, Tobacco, and Firearms issued subpoenas to two of Miller’s banks for information regarding the case. The banks gave the information that Miller entrusted to them, thereby leading to his conviction. Despite Miller maintaining that his fourth amendment rights were violated, The Supreme Court, led by Chief Justice Warren E. Burger, rejected Miller’s appeal, stating that because his banks were entrusted with his monetary records, the banks’s overturn of his information did not violate his fourth amendment rights. The banks were considered a third party. Like the banks of *United States v. Miller*, information given by internet service providers and telephone companies does not violate the fourth amendment because the information was already given willingly by the user to the third party.

The 3rd party doctrine’s legal standing was further solidified in the court case *Smith v. Maryland* (1979). In this case, the police, after tracking down a man that matched the

description for a robbery, requested for a telephone company to install a pen register to record the numbers used by the alleged assailant. The company complied without a warrant or court order and the police were able to use a call made by the assailant, Smith, to connect him to the robbery. At trial, Smith claimed that any evidence obtained from the pen register violated his Fourth Amendment rights as the police failed to obtain a warrant before installing it.. The court determined Smith's outcome by applying the Katz test in which they questioned the legitimacy of his expectation of privacy and whether it was reasonable. The Court "doubt[ed] that people in general entertain any actual expectation of privacy in the numbers they dial." The Court assumed that people, in the main, know and understand that they must convey the dialed numbers to the company to complete the call; that the company has a process of recording those numbers; and that the company actually does record those numbers for various business reasons. Essentially, Smith voluntarily conveyed the telephone numbers to the company, so he cannot reasonably expect privacy in that information.

In this case, Timothy Ivory Carpenter vs. United States, the plaintiffs moved to suppress the evidence obtained from the suspect and the cell towers because they believed that the FBI had violated their fourth amendment rights.

However, according to the third party doctrine, the information obtained by the FBI was given by a third party, in this case, one of the suspects. The suspect, upon questioning, implicated more co-conspirators and gave his phone to FBI agents. Upon determining the specific numbers of the co-conspirators, the FBI approached magistrate judges for 'transactional records" which was provided to them by a third party. These transactional records, such as toll records, subscriber information and cell site information are all information given to third parties such as Verizon and T-mobile. The Magistrate Judges had given them permission to obtain these records. The FBI used these records to obtain their relative locations, upon which they made the arrests. Timothy Ivory Carpenter petitioned to the courts and moved to suppress the evidence used against him. The court denied the motion. Carpenter had no reasonable expectation of privacy as-like in Smith-he voluntarily conveyed his location data to those third parties.

Furthermore, it is not the job of the courts to legislate privacy disputes related to information handed over to third parties. Rather, Congress are to determine the appropriate balance between privacy and security, while allowing for reasonable flexibility for change as technology advances.

## Conclusion

The 4th Amendment holds that all individuals are protected from “unreasonable search and seizure”. The argument that the lack of a warrant constitutes an “unreasonable search and seizure” is simply not substantiated as it completely ignores the previous precedents set and the third party doctrine. Sometimes, it is necessary for the proper authorities to take extended action in order to fulfill their duties, provided the actions are within reason. Carpenter v. United States of America represents one of these cases. Carpenter, according to the Katz test, had no reasonable expectation of privacy concerning the data collected by the third parties. Therefore, in alignment with the previous precedents that have been set, the information collected and conveyed to the FBI is not protected by the 4th amendment and can be used as evidence in court.

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